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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91239589
Party	Defendant Bowmaker's Whiskey Company
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Date	12/28/2020
Attachments	Declaration of Don Rodgers.pdf(691185 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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MAKER'S MARK DISTILLERY, INC.,)	
)	
Opposer,)	
)	Opposition No. 91239589
v.)	
)	
)	USSN 87/383,989
)	Mark: BOWMAKER'S WHISKEY
BOWMAKER'S WHISKEY COMPANY,)	
)	
Applicant.)	

DECLARATION OF DON RODGERS

Don Rodgers declares that:

1. I am a consultant at Rodgers Consulting, LLC located in Frankfort, Kentucky. I make this declaration based on personal knowledge unless otherwise stated.
2. I have been a consultant for Rodgers Consulting, LLC since about 2008. Rodgers Consulting, LLC consults with respect to the distilled spirits industry, including providing accounting and marketing needs for new and established businesses.
3. I worked at Beam Global Spirits and Wine ("Beam") for 34 years, including as Vice President of Integration, Vice President Corporate Controller, Vice President Controller, Corporate Controller and Manufacturing Controller. During this time, I gained substantial experience in the distilled spirits industry, including with respect to JIM BEAM bourbon and MAKER'S MARK bourbon, both products of Beam.
4. I received a bachelor's degree in finance from the Kentucky State University.

5. Bowmaker's Whiskey Company ("BWC") is a client of Rodgers Consulting and I have provided consulting services to BWC.

6. I understand that Maker's Mark Distillery, Inc. ("Maker's Mark") has opposed registration of BWC's trademark application for the trademark BOWMAKER'S WHISKEY on the grounds that the trademark BOWMAKER'S WHISKEY is confusingly similar to the Maker's Mark trademarks for MAKER'S MARK, MAKER'S MARK PRIVATE SELECT, MAKER'S 46 and MAKER'S (collectively "the Maker's Mark Trademarks"). I provide this declaration in response to the Maker's Mark opposition.

7. While I was at Beam, Beam acquired Maker's Mark in about 2006. As part of my responsibilities, I oversaw the Maker's Mark accounting and finance. For example, I initially interviewed Mr. Mitch Wagner (who has provided a declaration in this case) for a position at Beam and who was subsequently hired by Maker's Mark. While I was at Beam, I was in a senior position to Mr. Wagner.

8. Mr. Bryan Parks of BWC contacted me in about late 2016 for consulting services. At that time, he advised that the brand for his products would be BOWMAKER'S WHISKEY. During our discussions, I was fully familiar with the Maker's Mark products and the Maker's Mark Trademarks. If I thought that there would be any likelihood of confusion between the name BOWMAKER'S WHISKEY and the Maker's Mark Trademarks, I would have so advised Mr. Parks, and I would have advised him to select another name. Such advice is part of our consulting services.

9. I have reviewed the Declaration of Mr. Mitch Wagner. Mr. Wagner states at paragraph 27 that:

If Applicant is allowed to use and register the trademark BOWMAKER'S

WHISKEY for bourbon and distilled spirits, U.S. bourbon consumers will be confused about that product's affiliation with MAKER'S MARK; MAKER'S 46; MAKER'S; and MAKER'S MARK PRIVATE SELECT.

I have been asked by counsel for BWC to respond to this statement.

10. I disagree with Mr. Wagner that there is any likelihood of confusion between the trademarks BOWMAKER'S WHISKEY for distilled spirits, whiskey and bourbon and the trademarks MAKER'S MARK; MAKER'S 46; MAKER'S; or MAKER'S MARK PRIVATE SELECT for bourbon and whiskey. The BOWMAKER'S WHISKEY trademark and the Maker's Mark Trademarks are different in appearance and pronunciation. They create different commercial impressions. For example, the BOWMAKER'S WHISKEY name provides the distinct impression of a person who makes bows. On the other hand, the MAKER'S MARK trademark indicates the mark or branding of a craftsman. Additionally, purchasers of the Maker's Mark product are sophisticated in knowing the brand of bourbon that they are buying due to the nature of bourbon and the expense of the bourbon which may be in the range of \$25 to \$80. Accordingly, I do not believe that there will be any likelihood of confusion in the market between the BOWMAKER'S WHISKEY products and the Maker's Mark products, and clearly not among an appreciable number of ordinarily prudent purchasers of bourbon. Purchasers of bourbon would not make a mistake in thinking that the BOWMAKER'S WHISKEY bourbon is affiliated with the completely different names used by Maker's Mark.

I declare under penalty of perjury that the foregoing is true and correct.

December 28, 2020


Don Rodgers